IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 27842 of 2005(M)

PETITIONER:

C. ANWAR, S/O. MEMI,
PROPRIETOR, K.C.M. WOOD CRAFT,
PAYASSAL, IRIKKUR, KANNUR DISTRICT.

BY ADV. SRI.P.V.BABY

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, KANNUR.

3. THE SALES TAX OFFICER,
TALIPARAMBA.

4. THE TAHSILDAR, TALIPARAMBA.

ADDL. R5 IMPLEADED.

5. KERALA SMALL INDUSTRIES DEVELOPMENT
CORPORATION LTD., (SIDCO)
POST BOX NO. 4, KADAVANTHRA P.O.,
ERNAKULAM, KOCHI 20.

ADDL.R5 IMPLEADED AS PER ORDER DT. 29.9.05 IN IA. NO.14215/05

BY ADV. SRI.M.A.MANHU, SC, SIDCO
GOVERNMENT PLEADER SRI.TEK CHAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 27842/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS DT. 15.3.01 OF THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, KANNUR.

EXT.P2:- COPY OF THE COMMUNICATION DT. 31.3.03 OF THE SENIOR MANAGER, KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION.

EXT.P3:- COPY OF THE COMMUNICATION DT. 1.12.03 OF THE SENIOR MANAGER , SIDCO.

EXT.P4:- COPY OF THE ORDER DT. 20.9.02 OF THE ADDITIONAL SALES TAX OFFICER, TALIPARAMBA.

EXT.P5:- COPY OF THE COMMUNICATION DT. 29.8.03 ISSUED BY THE FOREST INDUSTRIES (TRAVANCORE) LTD.

E.XT.P6:- COPY OF THE PROCEEDINGS DT. 12.5.05 OF THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE SHOW CAUSE NOTICE DT. 12.5.05 ISSUED BY THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE OBJECTION DT. 28.5.05 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE JUDGMENT DT. 22.8.05 IN WPC NO.16757/05 OF THIS HONOURABLE COURT.

EXT.P10:- COPY OF THE ORDER 29.7.05 AND ARREST WARRANT ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P11:- COPY OF THE INTERIM ORD DT. 11.12.06 ISSUED BY THIS HONOURABLE COURT IN WPC 27842/05.

EXT.P12:- COPY OF THE ORDER DT. 12.7.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P13:- COPY OF THE REPRESENTATION DT. 22.7.07 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.

W.P.(C) NO.27842/2005

RESPONDENTS EXHIBITS

EXT.R5(a):- COPY OF THE PROFORMA OF THE PURCHASE ORDER.

EXT.R5(b):- COPY OF THE LETTER DT. 14.8.03 ISSUED BY THE MANAGING DIRECTOR, SIDCO.

EXT.R5(c):- COPY OF THE TABULAR STATEMENTS .

EXT.R5(d):- COPY OF THE TAX CERTIFICATE DT. 27.3.03.

EXT.R5(e):- COPY OF THE TAX CERTIFICATE DT. 29.3.03.

EXT.R5(f):- COPY OF THE TAX CERTIFICATE DT. 29.3.03.

EXT.R5(g):- COPY OF THE TAX CERTIFICATE DT. 27.11.02.

EXT.R5(h):- COPY OF THE TAX CERTIFICATE DT. 23.10.02.

EXT.R5(i):- COPY OF THE TAX CERTIFICATE DT. NIL.

/TRUE COPY/

P.S. TO JUDGE

V.GIRI, J.

W.P.(C).No.27842 of 2005 M

Dated this the 22nd day of October, 2007.

JUDGMENT

The petitioner is a defaulter in the matter of payment of sales tax due to the State. When there was alleged contumacious default in payment of tax, proceedings were initiated against him under Section 65 of the Revenue Recovery Act proposing to arrest and detain the petitioner. Ext.P7 show cause notice was issued to the petitioner stating that the petitioner has failed to pay the arrears amounting to Rs.14,82,913/-, with interest and the Collector is satisfied that the petitioner has willfully withheld payment of the arrears, deliberately transferred his property and is guilty of fraudulent conduct in order to evade payment, that he has means to pay arrears or some substantial part of the arrears, but is

refusing or neglecting to pay the same. Ext.P8 objections were filed by the petitioner to Ext.P7 notice. He denied the allegations. He prayed that an enquiry be conducted. Apparently, apprehending an order of arrest and execution of the same, the petitioner approached this court with W.P. (C).l6757/05 and the same was disposed of under Ext.P9 judgment directing the Collector to look into the objections and pass orders. During the pendency of the said writ petition, a stay was granted on condition that the petitioner pays an amount of Rs.1 lakh. It seems that the said amount was also not paid. Therefore, the District Collector taking into account Ext.P9 judgment came to the conclusion that the defaulter has willfully withheld the payment and cheated the Government as well. There is reference to the report of the Tahsildar, Taliparamba that he is leading a luxurious life. He is

capable of making payment and he is therefore willfully evading arrest warrant. Accordingly, Ext.P10 was passed directing that the petitioner be arrested and detained in civil prison. It is Ext.P10 which has been challenged in this writ petition.

2. A Counter affidavit has been filed by the department contending that the petitioner is leading a luxurious life; he is capable of discharging the arrears due to the Government and that there are no grounds to interfere with the order passed by the District Collector.

3. I heard learned counsel for the petitioner Mr.P.V.Baby and the learned Government Pleader Mr.Tek Chand. Decisions of this court in **Ghee Dee Fankula v. District Collector, Ernakulam** {**1993(1) ILR 81**}, **Muraleedharan v. State of Kerala {95(2) KLT 176}** and **Jolly George Varghese v. Bank of Cochin {1980 KLT 375}** have been referred to

by Mr.P.V.Baby to contend for the position that none of the ingredients of Section 65 of the Revenue Recovery Act are existing in the present case.

4. Mr.Tek Chand, on the other hand, referred to the decision of a learned Judge of this court in **Abu v. District Collector {2001(1) KLT 843}** suggesting that a mere default on the part of a person concerned in paying the amount which are admitted to be due should be taken as a willful default for the purpose of Section 65 of the Act.

5. In my opinion, there is failure on the part of the District Collector in exercising his jurisdiction legally and properly under Section 65 of the Act while passing Ext.P10 order. Apparently, the District Collector went by the fact that there was default on the part of the petitioner in complying with the order to deposit the amount as a condition for the

stay granted in W.P.(C)No.16757/05, which ultimately was disposed of by Ext.P9 judgment. Major portion of the discussion in Ext.P10 seems to be confined to the said aspect. No doubt, the District Collector is entitled to take note of any reluctance on the part of the petitioner in complying with a direction issued by the court. But action as contemplated under Section 65 of the Act, is dependent on an actual evaluation of the facts and ascertainment as to whether the petitioner has actually transferred any property within the time frame, whether he is in possession of means or property, whether he has willfully defaulted in making the payment or has committed any act which can be taken note of to find whether he is actually in possession of any properties. These factors do not seem to have engaged the attention of the District Collector. I do not express any opinion on the merits of the

contentions raised by the petitioner, at this stage.

For all these reasons, writ petition is allowed in part. Ext.P10 is set aside and the District Collector is directed to pass fresh orders after taking note of the objections raised by the petitioner and pass orders with reference to the ingredients mentioned in Section 65 of the Act. Fresh orders shall be within three months from the date of receipt of a copy of this judgment, which the petitioner shall produce within two weeks from today.

Sd/-

(V.GIRI)

JUDGE

sk/

//true copy//